National Labor Relations Board



Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 273-1991

September 1, 2006 W-3067

VISIT <u>WWW.NLRB.GOV</u> FULL TEXT C A S E S S U M M A R I Z E D

Dodger Theatrical Holdings, Inc.	New York, NY	1
Food & Commercial Workers Local 7R	Denver, CO	1
Museum of Modern Art	New York, NY	2
Parkwood Developmental Center, Inc.	Valdosta, GA	2
Sysco Food Services of Cleveland, Inc.	Cleveland, OH	3

OTHER CONTENTS

List of Decisions of Administrative Law Judges	4
List of Unpublished Board Decisions and Orders in Representation Cases	4

- Contested Reports of Regional Directors and Hearing Officers
- Uncontested Reports of Regional Directors and Hearing Officers
- Requests for Review of Regional Directors' Decisions and Directions of Elections and Decisions and Orders
- Miscellaneous Board Orders

The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information and is available on a paid subscription basis. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board. The case summaries constitute no part of the opinions of the Board. The Division of Information has prepared them for the convenience of subscribers.

If you desire the full text of decisions summarized in the Weekly Summary, you can access them on the NLRB's Web site (www.nlrb.gov). Persons who do not have an Internet connection can request a limited number of copies of decisions by writing the Information Division, 1099 14th Street, NW, Suite 9400, Washington, DC 20570 or fax your request to 202/273-1789. As of August 1, 2003, Administrative Law Judge decisions are on the Web site.

All inquiries regarding subscriptions to this publication should be directed to the Superintendent of Documents, U. S. Government Printing Office, Washington, DC 20402, 202/512-1800. Use stock number 731-002-0000-2 when ordering from GPO. Orders should not be sent to the NLRB.

Dodger Theatrical Holdings, Inc. and its successor Dodger Theatricals, Ltd. (2-CA-36048; 347 NLRB No. 94) New York, NY Aug. 22, 2006. The Board affirmed the administrative law judge's findings that by failing and refusing to provide Actors' Equity Association with the information requested in its letter dated Dec. 19, 2003, as modified subsequently by the Union to cover information for the period after March 29, 2002, the Respondent violated Section 8(a)(1) and (5) of the Act. [HTML] [PDF]

In a footnote, Member Schaumber stated he does not necessarily agree with Board precedent that a union can simply state a reason for its request for information without giving any factual basis. See *Hertz Corp. v. NLRB*, 105 F.3d 868, 874 (3d Cir. 1997). He would, however, find a violation where the union apprises the employer of its factual basis at the unfair labor practice hearing, the union's disclosure supports the relevancy of the information, and the employer continues to withhold it. See *Contract Flooring Systems*, 344 NLRB No. 117 (2005).

(Members Schaumber, Kirsanow, and Walsh participated.)

Charge filed by Actors' Equity Association; complaint alleged violation of Section 8(a)(1) and (5). Hearing at New York, Nov. 16 and Dec. 2, 2005. Adm. Law Judge Steven Fish issued his decision March 28, 2006.

Food & Commercial Workers Local 7R (27-CB-4697; 347 NLRB No. 97) Denver, CO Aug. 25, 2006. The Board reversed the administrative law judge's dismissal of the complaint allegation that the Respondent Union's organizer, Miguel Reyes, violated Section 8(b)(1)(A) of the Act by threatening to assault employee Rosa Cadena if she attended another union meeting. No exceptions having been filed, the Board adopted the judge's finding that the Respondent violated the Act by threatening to cause the discharge of employee Fernando Martinez if he disclosed to anyone threats made by organizer Reyes to assault Cadena or if Martinez disclosed to anyone offensive remarks and gestures of a sexual nature that Reyes had directed at Cadena. [HTML] [PDF]

The Board also adopted the judge's recommended dismissal of the allegation that the Respondent violated Section 8(b)(1)(A) by restraining and coercing Cadena through the operation of a motor vehicle.

The Employer, Conagra Foods, Inc., d/b/a Longmont Foods, filed objections to an election held on May 19, 2005. The judge recommended that the objections be dismissed and that the Union be certified. On Aug. 14, 2006, the Board issued an Order granting the Employer's motion to sever the instant case from Case 27-RD-1160 and to withdraw its exceptions to the judge's recommendation not to set aside the election.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Rosa Cadena, an Individual; complaint alleged violation of Section 8(b)(1)(A). Hearing at Denver on Aug. 2, 2005. Adm. Law Judge Thomas M. Patton issued his decision Sept. 29, 2005.

The Museum of Modern Art (2-CA-34355, 34714; 347 NLRB No. 96) New York, NY Aug. 24, 2006. The Board reversed the administrative law judge and dismissed the complaint allegations that the Respondent violated Section 8(a)(3) and (1) of the Act by accelerating an already planned lawful layoff of employees because of union considerations or because a union requests a meeting. [HTML] [PDF]

At issue is whether the judge correctly found that the Respondent violated the Act by accelerating the layoffs of Mary Corliss and Terry Geesken as a result of the Union's request to meet concerning the future of the Film Stills Archive (the FSA). The Board determined that the record does not support the judge's finding that the decision to accelerate the layoff was motivated by antiunion animus. If found that the Respondent had already made a decision to close the FSA and layoff its staff when the Union inquired about the status of the FSA.

When the Respondent closed the FSA, it laid off the FSA's two employees, Corliss and Geesken. Based on Corliss' visible role in a strike 16 months before her layoff, the judge found that the Respondent harbored animus against Corliss, but nonetheless determined that Respondent would have closed the FSA and laid off Corliss and Geesken even in the absence of that activity. Accordingly, the judge dismissed the layoff allegations. While the Board agreed that the layoffs did not violate Section 8(a)(3) and (1), the Board did so on the basis that the General Counsel failed to raise an inference that animus against protected activity was a motivating factor in the decision to lay them off.

(Chairman Battista and Members Schaumber and Kirsanow participated.)

Charges filed by Technical, Office and Professional Employees Local 2110; complaint alleged violation of Section 8(a)(1) and (3). Hearing at New York, on 23 days from Sept. 2003 to Jan. 2004. Adm. Law Judge Steven Davis issued his decision Dec. 16, 2004.

Parkwood Developmental Center, Inc. (12-CA-22866; 347 NLRB No. 95) Valdosta, GA Aug. 22, 2006. The Board, with certain modification, adopted the administrative law judge's finding that the Respondent violated Section 8(a)(1) and (5) of the Act. It agreed that the Respondent violated the Act by refusing to recognize and bargain in good faith with Food & Commercial Workers Local 1996; telling its employees that because of the Union employees were not receiving wage increases; telling employees that they cannot talk about the Union during company time; and unilaterally changing the terms of its collective-bargaining agreement by charging employees for individual health care coverage. [HTML] [PDF]

For the reasons set forth in *Caterair International*, 322 NLRB 64 (1996), Members Liebman and Kirsanow found that an affirmative bargaining order is warranted as a remedy for the Respondent's unlawful withdrawal of recognition. Member Kirsanow observed that the Board's practice of routinely ordering bargaining to remedy an unlawful refusal to bargain is of

exceptionally long duration and was unanimously reaffirmed in *Caterair International* after full briefing and oral argument. On this basis, Member Kirsanow joined Member Liebman in adhering to the *Caterair* doctrine.

Chairman Battista does not agree with the view expressed in *Caterair International* that an affirmative bargaining order is "the traditional, appropriate remedy" for an 8(a)(5) violation. He agreed with the U.S. Court of Appeals for the District of Columbia that a case-by-case analysis is required to determine if the remedy is appropriate. *Saginaw Control & Engineering, Inc.*, 339 NLRB 541 fn. 8 (2003). He recognized, however, that the view expressed in *Caterair International* represents extant Board law.

(Chairman Battista and Members Liebman and Kirsanow participated.)

Charge filed by Food & Commercial Workers Local 1996; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Valdosta on Oct. 29, 2003. Adm. Law Judge Pargen Robertson issued his decision Feb. 10, 2004.

Sysco Food Services of Cleveland, Inc. (8-CA-35780; 347 NLRB No. 98) Cleveland, OH Aug. 25, 2006. In affirming the administrative law judge, the Board held that the Respondent violated Section 8(a)(1) and (3) of the Act by telling Charging Party Jeffrey Travnik that he would have to agree to limit or forgo grievance filing in order to be considered for reinstatement. [HTML] [PDF]

In a footnote, Member Schaumber noted:

[C]ontext is key in most 8(a)(1) cases, and this one is no exception. The statement found to be coercive was uttered in a casual, consensual, and off-the-record discussion about potential reinstatement for Travenik based largely upon the Union's business agent Sayre's long-standing working relationship with the Respondent's director of warehousing Spadaro. The record shows that many hundreds of grievances were filed annually in what is seemingly a less than harmonious labor/management environment. As such, one might easily find that Spadaro's reference to the filing of 'stupid grievances' was more innocuous (and possibly accurate) than it was coercive. One might also question the wisdom of bringing the full force of the Federal government to bear in prosecuting such a violation.

However, given the judge's thoughtful analysis, careful credibility resolutions, and direct observation of the witnesses, Member Schaumber cannot conclude that the judge erred in finding that Spadaro's statement might, in context, have had the effect of restraining or coercing employees in the exercise of their Section 7 rights. He therefore concurred in finding the violation.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Jeffrey A. Travnik, an Individual; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Cleveland, March 7-9, 2006. Adm. Law Judge David I. Goldman issued his decision June 7, 2006.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Saint Vincent Charity Hospital of Cleveland, OH (Ohio Nurses) Cleveland, OH Aug. 21, 2006. 8-CA-36377; JD-61-06, Judge Ira Sandron.

OGS Technologies, Inc. (Auto Workers Local 376) Waterbury, CT Aug. 23, 2006. 34-CA-9336, 9458; JD(SF)-42-06, Judge Clifford H. Anderson.

P.S.K. Supermarkets, Inc. (Food & Commercial Local 342) Brooklyn, NY Aug. 23, 2006. 29-CA-26862, et al.; JD(NY)-35-06, Judge Howard Edelman.

State Plaza, Inc. a wholly-owned subsidiary of RB Associates, Inc., d/b/a State Plaza Hotel (Hotel & Restaurant Employees Local 25) Washington, DC Aug. 25, 2006. 5-CA-32594; JD-62-06, Judge Karl H. Buschmann.

LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to and adopted Reports of Regional Directors or Hearing Officers)

DECISION AND CERTIFICATION OF REPRESENTATIVE

Westport Inn, Hartford, CT, 34-RC-2162, Aug. 25, 2006 (Members Schaumber, Kirsanow, and Walsh)

Amerigas Propane, Goshen and Warsaw, IN, 25-RC-10332, Aug. 25, 2006 (Members Schaumber, Kirsanow, and Walsh)

DECISION AND ORDER REMANDING [to Regional Director for further appropriate action]

Chef Solutions, Inc., d/b/a Pennant Foods, Hartford, CT, 34-RC-1925, Aug. 23, 2006 (Members Schaumber, Kirsanow, and Walsh)

(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

DECISION AND DIRECTION [that Regional Director open and count challenged ballot]

Shapiro Recycling Systems, Dickerson, TX, 26-RC-8499, Aug. 25, 2006 (Members Liebman, Schaumber, and Kirsanow)

(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

American Red Cross Blood Services-New England Region, Manchester, NH, 1-RC-22028 Aug. 23, 2006 (Members Schaumber, Kirsanow, and Walsh)

Catelli Brothers, Inc., Collingswood, NJ, 4-RC-21173, Aug. 23, 2006 (Members Schaumber, Kirsanow, and Walsh)

Pace University, New York, NY, 2-UC-589, Aug. 23, 2006 (Members Schaumber, Kirsanow, and Walsh)

Miscellaneous Board Orders

ORDER [denying motion to reconsider of denial of oral argument]

Croft Metals, Inc., McComb, MS, 15-RC-8393, Aug. 21, 2006 Golden Crest Healthcare Center, Hibbing, MN, 18-RC-16415, Aug. 21, 2006 Oakwood Healthcare, Taylor, MI, 7-RC-22141, Aug. 21, 2006
